

U.S. Patent Application No.: 09/964,240
AMENDMENT B

ATTORNEY DOCKET NO.: 3974.002

REMARKS

The Examiner's courtesy of the telephonic interview conducted on December 18, 2003, is gratefully acknowledged, and Applicant believes that the amendments to the claims, and new claims, presented herein are in accord with that discussion.

The Examiner's statement at page 6 of the present Office Action that claims 5, 6, 9, 10, and 19 would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims, is also gratefully acknowledged.

Claims 1-19 are pending.

In response to the Examiner's requirement at page 3 of the Office Action, Applicant hereby cancels, without prejudice or disclaimer, previously withdrawn claims 1-2 and 13-16. Applicant expressly reserves the right to pursue these claims in one or more divisional applications, if such is required.

Claims 5, 6, 9, 10, and 19 are canceled herein without prejudice or disclaimer.

Claims 3, 4, 7, 8, and 17 are amended herein as described below.

New claims 20-30, which are also described below, are added to better describe that which the Applicant regards as his invention.

Care has been taken to ensure that no new matter has been added and entry of the amended and new claims is respectfully requested.

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Rejections under 35 U.S.C. §112, ¶1

Claims 4 and 8 stand rejected as allegedly containing subject matter not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors, at the time the application was filed, had possession of the claimed invention.

Applicants assert that the rejection is rendered moot by the amendments to claims 4 and 8 herein. Specifically, as discussed and agreed in the telephonic interview of December 18, 2003, ample support for a nucleic acid vaccine may be found, for example, at Example 10 and paragraph 6 of the specification as filed. Applicants further note that the Examiner has not asserted a lack of support with respect to the nucleic acid vaccine of claim 4 or claim 8 in the present Office Action.

Accordingly, Applicants respectfully request that the rejection of claims 4 and 8 under §112, ¶1, be withdrawn.

Rejection of Claims under 35 U.S.C. §102

Claims 17 and 18 stand rejected as being allegedly anticipated by Sakagami et al. (U.S. 4,985,249) or Sham et al. (U.S. 5,914,332).

Applicants present new claims 27 and 28 herein, corresponding to claims 17 and 18 amended in accord with the Examiner's kind suggestion. Thus, claim 19 is cancelled. In addition, claim 17 is amended to include other process limitations for reasons set forth in the following section.

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Applicants assert that new claims 27 and 28, claim 17 as amended herein, and dependent claim 18, are patentable, and therefore withdrawal of the rejection under §102(b) is requested..

Rejection of Claims under 35 U.S.C. §103(a)

Claims 3, 4, 7, 8, 11, 12, 17 and 18 stand rejected as being allegedly unpatentable for obviousness over Sakagami in view of Sham.

The Examiner's kind suggestion to incorporate the process limitations of claims 5, 9 and 19 into claims 3, 7, and 17, respectively, in order to clearly distinguish over the cited art, is gratefully acknowledged and adopted.

First, with respect to rejected claims 3 and 4, directed to a system for vaccination, new claims 20-22 are presented in accord with the Examiner's suggestion. Claim 20 corresponds to previous claim 3 further incorporating the limitations of claim 5, as suggested. Claim 21 corresponds to previous claim 4. Claim 22 corresponds to previous claim 6. Thus, new claims 20-22 are supported by, for example, previous claims 3-6.

Additionally, claim 3 is amended herein to recite that the pine cone extract is obtained by extraction with a solution of potassium hydroxide and comprises potassium. Support for extraction with potassium hydroxide may be found, for example, in claim 5 as filed and at paragraph 37 of the specification. Applicants note that pine cone extract prepared according to the

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disclosed method (see, e.g., paragraphs 35-40) contains potassium. Thus, claim 3 as amended is supported by the application as filed. In addition, Applicants respectfully draw the Examiner's attention to Applicant's Declaration under Rule 132 submitted on July 31, 2003 in the companion case (U.S. Application No. 10/000,476), which demonstrated unexpectedly superior properties of a pine cone extract obtained using potassium hydroxide. Should the Examiner deem it necessary, Applicants will submit a similar declaration in the present case.

Second, with respect to rejected claims 7, 8, 11, and 12, new claims 23-26 are presented in accord with the Examiner's suggestion. Claim 23 corresponds to previous claim 7 further incorporating the limitations of claim 9, as suggested. Claim 24 corresponds to previous claim 8. Claims 25 and 26 correspond to previous claims 11 and 12. Thus, new claims 23-26 are supported by, for example, previous claims 7-12.

Claim 7 is also amended herein to recite that the pine cone extract is obtained by extraction with a solution of potassium hydroxide and comprises potassium.

Third, with respect to rejected claims 17 and 18, new claims 27 and 28 are presented in accord with the Examiner's suggestion. Claim 27 corresponds to previous claim 17 further incorporating the limitations of claim 19, as suggested. Claim 28 corresponds to previous claim 18. Thus, new claims 27 and 28 are supported by, for example, previous claims 17 and 18.

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Claim 17 is also amended herein to recite that the pine cone extract is obtained by extraction with a solution of potassium hydroxide and comprises potassium.

Applicants assert that the claims as amended herein, and the new claims presented, render the rejection under 35 U.S.C. §103(a) moot because the process limitations of the amended claims are not taught or suggested by Sham or Sakagami, and for reasons provided previously in Amendment A. Therefore, Applicant respectfully requests that the rejection under 35 U.S.C. §103(a) be withdrawn.

New Claims 29 and 30

New claims 29 and 30 are presented, and are directed to a pine cone extract. These claims are presented in view of the Examiner's position at page 3 of the Office Action, that the intended use of the pine cone extract (as an adjuvant) does not patentably distinguish the composition, and the further suggestion at page 6 to incorporate appropriate process limitations. Applicants assert that these claims are supported as described in the previous section.

As discussed in the telephone interview of December 18, 2003, claims directed to pine cone extract were the subject of a previous restriction requirement in the present application. In view of the present amendments incorporating process limitations into the claims, Applicants assert that the claims presented are now so intermingled as to constitute a single invention.

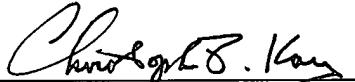
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Therefore, entry and consideration of new claims 29 and 30 is requested.

There being no further rejections, favorable consideration and early issuance of the Notice of Allowance are respectfully requested. Should further issues remain that the Examiner believes may be addressed by telephone, the Examiner is respectfully requested to contact the undersigned at the telephone number below.

Respectfully submitted,



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